



towardsjustice.org | 720-441-2236
303 E. 17th Street, Suite 400 Denver, CO 80203
PO Box 371680, PMB 44465 Denver, CO 80237-5680

January 20, 2023

By CM/ECF

Judge Nina R. Morrison
United States District Court for the Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: *Vidal v. Advanced Care Staffing, LLC*, 22-cv-05535-NRM-MMH (E.D.N.Y.)

Dear Judge Morrison:

We represent Plaintiff Benzor Shem Vidal in the above-referenced matter. We write to provide a brief update of developments in the arbitration since Mr. Vidal served his motion for a preliminary injunction (the “Motion”) on Friday, January 23, 2023.

After serving Defendant with the Motion, Plaintiff provided the arbitrator with a copy of the Motion papers. Mr. Vidal also advised the arbitrator that he would not be meeting pending deadlines she had set in the arbitration, including the January 20, 2022 deadline to respond to interrogatories, until the Court resolved the Motion. Plaintiff reinforced that the Arbitrator does not have authority to hear the case against Mr. Vidal until this Court rules on whether the arbitration provision contains a delegation clause that clearly and unmistakably delegates issues of arbitrability to the arbitrator and on whether any such delegation provision is valid and enforceable.

This morning, AAA transmitted to Mr. Vidal and Advanced Care Staffing the following message from the arbitrator:

“A previous response I drafted to the recent correspondence was not transmitted to the parties.

Please note that the Arbitrator will stay this matter upon party agreement or by court order. Otherwise, the Arbitrator’s prior Order, dated December 9, 2022, shall stand.

However, in light of any possible confusion, all discovery deadlines set forth in that Order shall be extended by thirty (30) calendar days, and the parties’ status conference shall be rescheduled for March 10, 2023 at 10:00 a.m.”

We provide the Court with this information to ensure a complete record, but do not think it alters the necessity of prompt judicial intervention, since the arbitrator continues to decline to stay the proceedings absent agreement of the parties (which ACS has so far refused) or a court order. Furthermore, that the arbitrator has provided Mr. Vidal thirty more days to respond to discovery does not reduce or eliminate the irreparable harm he faces because of the arbitration.

We thank the Court for its attention to this matter and will be prepared to address the questions raised by the Motion at the Court videoconference on February 7, 2023.

Respectfully submitted,

/s/ David H. Seligman

David H. Seligman

cc: All counsel of record by ECF